

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

(1) LETTERS PATENT APPEAL No 642 of 1996

in

SPECIAL CIVIL APPLICATION No 5555 of 1993

with

(2) LETTERS PATENT APPEALS No. 643 to 696 of 1996

in

SPECIAL CIVIL APPLICATIONS NO.5711 to 5764 of 1993

with

(3) LETTERS PATENT APPEALS NO. 697 to 718 of 1996

In

SPL. CIVIL APPLICATIONS NO. 6321 to 6342 of 1993

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL Sd/-
and

MR.JUSTICE P.B.MAJMUDAR Sd/-

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements? No
2. To be referred to the Reporter or not? No :
3. Whether Their Lordships wish to see the fair copy : YES
of the judgement? No
4. Whether this case involves a substantial question : YES
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder? No
5. Whether it is to be circulated to the Civil Judge? No :

JAYKUMAR G VYAS

SHOP NO 2

Versus

VIJAY HOUSING DEVELOPMENT

CORPORATION

Appearance:

MR ARUN H MEHTA for Appellants

RULE UNSERVED for Respondent No. 1

MR PRASHANT G DESAI for Respondent No. 2

CORAM : MR.JUSTICE J.M.PANCHAL and

MR.JUSTICE P.B.MAJMUDAR

Date of decision: 21/12/1999

ORAL COMMON JUDGEMENT

(Per : Panchal, J.)

All the above-numbered Letters Patent Appeals are directed against common judgment and order dated December 21, 1993 rendered by the learned Single Judge, in Special Civil Application No.5555/93, Special Civil Applications No.5711/93 to 5764/93 and Special Civil Applications No. 6321/93 to 6342/93. As common questions of facts and law arise for determination of this Court in the above-referred to appeals, we propose to dispose of them by this common judgment.

2. In Special Civil Applications which were filed by the appellants under Article 226 of the Constitution, they had challenged action of Ahmedabad Municipal Corporation with regard to demolition of unauthorised constructions, particularly those made in the space which was meant for parking vehicles. An injunction was also prayed against demolition of the constructed shops in cellar, ground floor and first floor of the building known as 'Vijay Plaza' situated at Kankariya Road, Opposite Abad Dairy, Ahmedabad.

3. The learned Single Judge by the impugned common judgment has directed the Ahmedabad Municipal Corporation to ascertain the true facts to enable itself to proceed in accordance with law and in the light of observations made in the judgment. A further direction is also given to the Ahmedabad Municipal Corporation to complete the

proceedings within four months from the date of judgment. It is also directed that the Ahmedabad Municipal Corporation should consider whether it is possible to regularise the constructions already made, if request for regularisation is made by the concerned petitioners. Feeling aggrieved by the judgment, the original petitioners have filed above-numbered Letters Patent Appeals.

4. We may state that Ms. Kusumben K.Shah and others, who were occupying shops constructed in the cellar, ground floor and first floor of the building known as 'Vijay Plaza', situated at Kankariya Road, opposite Abad Dairy, Ahmedabad, had filed Special Civil Applications No. 9938/94 to 9949/94 challenging the action of Ahmedabad Municipal Corporation with regard to demolition of unauthorised constructions. In those petitions also the learned Single Judge by judgment and order dated September 1, 1994 had given directions which are mentioned above. Feeling aggrieved by the judgment of the learned Single Judge, Ms. Kusumben K.Shah had filed Letters Patent Appeal No. 871/95. The Division Bench comprising Mr. Justice M.R.Calla and Mr. Justice J.R.Vora, had disposed of Letters Patent Appeal No.871/95 in the following terms :-

"CORAM ; MR.JUSTICE M.R.CALLA AND
MR.JUSTICE J.R.VORA
Date of Order : 10/07/98

ORAL ORDER

This Letters Patent Appeal is directed against the common judgment and order dated 1st September,1994 passed in Special Civil Applications No.9938/94 to 9949/94. It appears from the order passed by the learned Single Judge in all the Special Civil Applications that the petitioners had challenged the action of the Municipal Corporation with regard to demolition of unauthorised construction, particularly those made in the space which was required to be kept for parking vehicles. An injunction was also prayed against the demolition of the constructed shops in the cellar, ground floor and first floor of the building known as Vijay Plaza, situated at Kankaria Road, Opposite : Abad Dairy, Ahmedabad.

We have heard the learned counsel and have perused the impugned order dated 1st September, 1994. The learned Single Judge has given certain directions to the Municipal Corporation as to how it should proceed and

for that purpose time limit has also been fixed. Such directions, in our opinion, are innocuous directions to be followed by the Municipal Corporation and direction had also been given to consider whether it could lawfully regularise the constructions already made.

We do not find any scope for interference with this order passed by the learned Single Judge as in our opinion the directions issued by the learned Single Judge seek to render substantial justice between the parties and the impugned order is a just and fair order which hardly warrants any interference.

There is no merit in the Letters Patent Appeal and the same is hereby dismissed.

(M.R.Calla,J.) (J.R.Vora,J.)"

Similarly, other occupiers of shops constructed in cellar, ground floor and first floor of the building known as 'Vijay Plaza', situated at Kankaria Road, opposite Abad Dairy, Ahmedabad, had filed Letters Patent Appeals No. 872/95 to 881/95 against judgment and order dated September 1, 1994 rendered by the learned Single Judge in Special Civil Applications No. 9938/94 to 9949/94. Letters Patent Appeals No. 872/95 to 881/95 were disposed of by Division Bench comprising the then Hon'ble Chief Justice and Mr.Justice S.D.Dave, in the following terms :-

"CORAM; CHIEF JUSTICE MR.K.G.BALAKRISHNAN and
MR.JUSTICE S.D.DAVE
Date of Order : 17/06/1999

COMMON ORAL ORDER

Per : K.G.Balakrishnan, CJ:

Original Special Civil Applications are filed to restrain the respondent Corporation from demolishing the unauthorised construction. Similar Special Civil Application No. 9938 of 1994 was disposed of by the Ld. Single Judge with certain directions to the respondent-Corporation. Aggrieved by the same, an appeal was preferred being Letters Patent Appeal No.871 of 1994. That was finally disposed of on 10.7.1998, by observing that :-

'We have heard the learned counsel and have perused the impugned order dated 1st September, 1994. The learned Single Judge has given certain directions to the Municipal Corporation as to how

it should proceed and for that purpose time limit has also been fixed. Such directions, in our opinion, are innocuous directions to be followed by the Municipal Corporation and direction has also been given to consider whether it could lawfully regularise the constructions already made.

We do not find any scope for interference with the order passed by the learned Single Judge as in our opinion the directions issued by the learned Single Judge seek to render substantial justice between the parties and the impugned order is a just and fair order which hardly warrants any interference."

These appeals are also covered by the said order passed in L.P.A.No. 871 of 1995. Hence, these appeals are also dismissed in line of the orders passed in L.P.A.No. 871 of 1995.

Dt.17.6.99. (K.G.Balakrishnan,C.J.) (S.D.Dave,J.)"

5. From the two judgments which are quoted above and which are passed by Division Bench while disposing of appeals filed by the original petitioners in Special Civil Applications No. 9938/94 to 9949/94, it becomes evident that the directions given by the learned Single Judge are innocuous directions to be followed by the Ahmedabad Municipal Corporation. As observed by the Division Bench which was hearing Letters Patent Appeals filed earlier, directions issued by the learned Single Judge seek to render substantial justice between the parties and the impugned judgment is a just and fair judgment, which hardly warrants any interference.

6. As the present appeals are covered by judgment dated July 10, 1998 rendered in Letters Patent Appeal No.871/95 and judgment dated June 17, 1999 rendered in Letters Patent Appeals No.872/95 to 881/95, we are of the opinion that these appeals cannot be entertained and are liable to be dismissed in the line of the orders passed by the previous benches. The appeals, therefore, fail and are dismissed, with no orders as to costs.

(patel)

